

1 Patrick R. Kitchin, Esq. (SBN. 162965)
2 **THE LAW OFFICE OF PATRICK R. KITCHIN**
3 565 Commercial Street, 4th Floor
4 San Francisco, CA 94111
5 415-677-9058
6 415-627-9076 (fax)

7 Attorneys for Plaintiffs
8 Janis Keefe, Corinne Phipps and Renee Davis
9
10

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

11 ANN OTSUKA, an individual; JANIS KEEFE,) Case No.: C-07-02780-SI
12 an individual; CORINNE PHIPPS, an)
13 individual; and RENEE DAVIS, an individual;) **DECLARATION OF LISA LIU IN**
14 individually and on behalf of all others similarly) **SUPPORT OF PLAINTIFFS' MOTION**
situated,) **FOR CLASS CERTIFICATION**
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)

Plaintiffs,)
vs.)
POLO RALPH LAUREN CORPORATION; a)
Delaware Corporation; POLO RETAIL, LLC., a) **Judge: Hon. Susan Illston**
Delaware Corporation; POLO RALPH) **Hearing Date: July 11, 2008**
LAUREN CORPORATION, a Delaware) **Hearing Time: 9:00 a.m.**
Corporation, doing business in California as) **Location: Courtroom 10, 19th Floor**
POLO RETAIL CORP; and FASHIONS) **450 Golden Gate Avenue**
OUTLET OF AMERICA, INC., a Delaware) **San Francisco, California 94102**
Corporation)
Defendants.)
)
)
)

1 I, Lisa S. Liu, declare as follows:

2 1. I was retained by The Law Office of Patrick R. Kitchin to analyze employee
3 commission and payroll data I understand was produced to his office by Defendants'
4 counsel in this case. I make this declaration based on personal knowledge.

5 Education, Training and Experience

6 2. I have a B.S. Degree in Business Administration from the University of California
7 at Berkeley (Haas School of Business). I currently am a director of business performance
8 management for a major healthcare organization in California. I previously worked in
9 finance for that organization for approximately four years – about two years in corporate
10 finance and about two years in national sales and account management finance. In those
11 capacities, my work included, among other things, budgeting (including the management of
12 a \$30 million budget), forecasting and payroll analysis, including that involving the use of
13 Excel. I also have worked as an auditor for Pricewaterhouse Cooper, a Big 5 accounting
14 and consulting firm, as an auditor.

15 Assignment and Conclusions

16 3. I was asked to conduct analyses based on Polo employee payroll data of the
17 ascertainability and total number of Polo sales associates who did not make enough
18 commissions to cover their base hourly wage during more than 50% of their total pay
19 periods (filtering out those pay periods during which Polo's records indicated those
20 employees did not work – i.e., where hours worked was equal to 0). I was also asked to
21 determine the number of pay periods during which any of the employees I identified had
22 not earned more than 50% of their wages through commissions.

23 4. To that end, I have combined Polo payroll data from various spreadsheets provided
24 to me by Plaintiffs' counsels. Based on my experience and education, I was able to reach
25 reliable conclusions (assuming the data's reliability) regarding the ascertainability and
26 aggregate number of employees who did not make enough in commissions to satisfy the
27 tests set forth above.

5. I am able to conclude, first, that the identities of those persons who did not make enough commissions to cover their base hourly wage during more than 50% of their total pay periods are ascertainable through employee identifiers referred to as "file numbers."

6. Second, I am able to conclude that the total number of persons who did not make enough commissions to cover their base hourly wage during more than 50% of their total pay periods is 182, which represents 38.3% of all sales associates included in the data.

7. Third, I was able to identify and represent in Exhibit 1 the number of pay periods in which each identified employee's wages were not comprised of more than 50% commissions based on the sales and commission rates. That information is contained in rows 4-6 for each employee represented in the data.

Details of Data Analysis

8. I was provided a spreadsheet containing data from the 5 years (2002-2007), which I combined into one single data set.

9. After combining the data into a single spreadsheet, I created an “If/Then” formula in Column S that stated: If Commission dollars (Column J) is greater than or equal to Hourly Total (Column M), then enter “comm met wage.” For all other situations (i.e. commission dollars is less than hourly total), enter “did not meet wage.” This identifies the line items in which the commission dollars earned were not enough to cover the employee’s hourly total for that pay period.

10. Created an If/Then formula in Column T that stated: if Column S has the value “comm met wage,” then enter the number one. This resulted in a count of the number of line items in which the employee’s commission dollars were enough to cover the hourly total.

11. Column U – Created an If/Then formula in Column U that stated: if Column S has the value “did not meet wage,” then enter the number one. This resulted in a count of the number of line items in which the employee’s commission dollars were **not** enough to cover the hourly total.

12. Column V. - I then created an If/Then formula in Column V that stated: If Commission dollars (Column J) is greater than or equal to half of the hourly total (Column M), then enter "met

1 half of wage". For all other situations (i.e. commission dollars is less than half of the hourly total),
2 enter "did not meet half of wage."

3 13. Column W – Created an If/Then formula in Column W that stated: if Column V has the
4 value "met half of wage," then enter the number one. This allows the ability to sum the number of
5 line items in which the employee's commission dollars were enough to cover half of the hourly
6 total.

7 14. Column X – Created an If/Then formula in Column X that stated: if Column V has the
8 value "did not meet half of wage," then enter the number one. This allows the ability to sum the
9 number of line items in which the employee's commission dollars were not enough to cover half
10 of the hourly total.

11 15. Filtered out line items in which no hours were recorded.

12 a. Created If/Then statement in Column Y that stated: if the hours recorded (Column
13 K) is less than or equal to zero, then enter "exclude." For all other situations (i.e.
14 hours recorded is greater than zero), then enter "include."

15 b. After this filter was put in place, 7598 records / line items remained.

16 16. Two scenarios were requested by Mr. Kitchin in the same table:

17 a. **Scenario #1:** Identify employees whose commission failed to cover their hourly
18 wage total more than 50% of the time.

19 b. **Scenario #2:** Number of times employee's commission dollars failed to cover half
20 of their hourly wage total.

21 17. To perform the analyses, a pivot table was created using the data set of 7598 line items
22 that met the "hours recorded >0" criteria, labeled "include" in Column Y of the raw data set.

23 18. Data was pulled by File # (employee identification number) to display 6 pieces of
24 information:

25 a. Number of line items / pay periods in which that employee's commission dollars
26 covered the hourly wages.

- 1 b. Number of line items / pay periods in which that employee's commission dollars
- 2 did not cover the hourly wages.
- 3 c. Total number of pay periods. (i.e. #1 + #2 = #3)
- 4 d. Number of line items / pay periods in which that employee's commission dollars
- 5 covered half of the hourly wages.
- 6 e. Number of line items / pay periods in which that employee's commission dollars
- 7 did not cover half of the hourly wages.
- 8 f. Total number of pay periods. (i.e. #4 + #5 = #6)

9 19. To complete the analysis for Scenario #1, an If/Then formula was created in Column H
10 of the analyses file that stated: If the number of pay periods / line items in which the employee's
11 commission failed to cover the hourly total is more than 50% of the total pay periods for that
12 employee, then enter display "did not cover more than 50% of the time." For all other situations
13 (i.e. employee's commission dollars covered the hourly total 50% or more of the pay periods), then
14 enter "covered wage 50% or more of the time."

15 20. Column I – Created an If/Then formula in Column I that stated: if Column H has the
16 value "covered wage 50% or more of the time," then enter the number one. This allows the ability
17 to sum the number of line items in which the employee's commission dollars were enough to cover
18 the hourly total in at least 50% of the pay periods.

19 21. Column J – Created an If/Then formula in Column J that stated: if Column H has the
20 value "did not cover wage 50% or more of the time," then enter the number one. This allows the
21 ability to sum the number of line items in which the employee's commission dollars were not
22 enough to cover the hourly wages in at least 50% of the pay periods.

23 ///

24 ///

25 ///

26 ///

22. Based on this analysis, I created Exhibit 1 showing my conclusions.

I affirm under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was made on June 27, 2008, in Oakland, California.



Lisa S. Liu